

1115 Nursing Home and Service Employees Union, Hotel Employees Restaurant Employees, AFL-CIO and West Lawrence Care Center and Local 1199, Drug, Hospital and Health Care Employees Union, Party in Interest. Case 29-CP-571

September 24, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On August 6, 1992, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(b)(7)(B) of the National Labor Relations Act by threatening to picket West Lawrence Care Center, an employer, with an object of forcing or requiring West Lawrence to recognize or bargain with the Respondent as the representative of certain of its employees, and of forcing those employees to accept or select the Respondent as their collective-bargaining representative, notwithstanding that a valid election and certification under Section 9(c) of the Act had been conducted within the previous 12 months in Cases 29-RC-7396 and 29-RD-639. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint and raising affirmative defenses.

On March 15, 1993, the General Counsel filed a Motion for Summary Judgment. On March 17, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

In its response to the motion, the Respondent admits that, since about July 23, 1992, it has threatened to picket West Lawrence in furtherance of its demand that West Lawrence recognize and bargain with the Respondent as the representative of West Lawrence's employees in the unit found appropriate in Cases 29-RC-7396 and 29-RD-639,¹ notwithstanding that another union (Local 1199, the Party in Interest) has been certified as the representative of the employees in question within the last 12 months. The Respondent attacks the validity of the election and certification on the basis of its election objections, the Board's unit determination, contract bar, and the passage of time be-

tween the election and the issuance of the certification in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). We therefore grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent and Local 1199 are labor organizations. West Lawrence Care Center, a New York corporation, operates a nursing home in Far Rockaway, New York. During the year immediately preceding the issuance of the complaint, a period representative of its annual operations generally, West Lawrence derived gross annual revenues in excess of \$100,000 in the course and conduct of the operations described above, and purchased and caused to be transported and delivered to that facility, in interstate commerce, directly from points outside the State of New York, goods, supplies, and materials valued in excess of \$50,000. We find that the Respondent and Local 1199 are labor organizations within the meaning of Section 2(5) of the Act, and that West Lawrence is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held on May 17, 1990, Local 1199 was certified on April 15, 1992,² as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time nonprofessional employees and licensed practical nurses employed by West Lawrence Care Center, Inc., excluding all registered nurses, professional employees, office clerical employees, guards and supervisors as defined in the Act.

¹ *West Lawrence Care Center*, 305 NLRB 212 (1991).

² The Respondent and West Lawrence filed requests for review of the Regional Director's Supplemental Decision on Objections and Certification of Representative. On June 1, 1992, the Board (Member Devaney dissenting) denied the requests for review.

B. Threats to Picket

Since about July 23, 1992, the Respondent has threatened to picket West Lawrence in support of the Respondent's demand that West Lawrence recognize and bargain with it as the representative of the employees in the above unit, notwithstanding that a valid election had been held, and Local 1199 certified as those employees' representative, within the preceding 12 months.³

Discussion and Conclusions

Section 8(b)(7)(B) provides that

(b) It shall be an unfair labor practice for a labor organization or its agents—

...

(7) . . . to . . . threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees . . . unless such labor organization is currently certified as the representative of such employees:

...

(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted[.]

The Respondent admits that it has threatened, on and after July 23, 1992, to picket West Lawrence in support of its demand that the Employer recognize and bargain with it as the representative of employees in the unit described above, when a valid election had been held within the previous 12 months which it did not win. We find that this threat constitutes an unlawful threat to picket in violation of Section 8(b)(7)(B) of the Act, and is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(7)(B), we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to refrain from picketing West Lawrence Care Center for recognitional purposes for 1 year fol-

³ Although the initial threat to picket was made more than 12 months after the day of the balloting, it occurred only 3 months after the Regional Director certified Local 1199, and only a few weeks after the Board denied review of the Regional Director's decision. The Board has long held that, for purposes of determining whether Sec. 8(b)(7)(B) has been violated, the 12-month period begins to run on the certification date, not the date of the balloting. *Retail Clerks Local 692 (Irvins, Inc.)*, 134 NLRB 686, 688-690 (1961).

lowing the posting of the attached notice,⁴ and from picketing West Lawrence for recognitional purposes when, within the preceding 12 months, a valid election has been conducted under Section 9(c) which the Respondent did not win.

ORDER

The National Labor Relations Board orders that the Respondent, 1115 Nursing Home and Service Employees Union, Hotel Employees Restaurant Employees, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening to picket West Lawrence Care Center for a period of 1 year following the posting of the attached notice, when an object of the threat is forcing or requiring West Lawrence to recognize or bargain with the Respondent as the representative of its employees in the following unit:

All full-time and regular part-time nonprofessional employees and licensed practical nurses employed by West Lawrence Care Center, Inc., excluding all registered nurses, professional employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Threatening to picket West Lawrence Care Center for any of the above objects when, within the preceding 12 months, a valid election under Section 9(c) has been held which the Respondent did not win.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its business office and meeting halls copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

⁴ When Sec. 8(b)(7)(B) has been violated, the Board orders the union to refrain from picketing or threatening to picket for recognitional (or, if applicable, organizational) purposes for 12 months from the date the union ceases its unlawful activities. *Retail Clerks Local 219 (National Food Stores)*, 134 NLRB 1680, 1685 and fn. 4 (1961); *Irvins, Inc.*, supra, 134 NLRB at 691. As the Respondent has admitted that its threat to picket is, in effect, a continuing one that has not been rescinded, we find that the Respondent will not have ceased its unlawful activities until it posts the notice stating that it will cease and desist from further violations.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Furnish the Regional Director with signed copies of the notice for posting by West Lawrence Care Center, if the employer is willing to post them.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER DEVANEY, dissenting.

For the reasons set forth in my dissent in the underlying representation proceeding, *West Lawrence Care Center*, 305 NLRB 212 (1991), I would have dismissed the representation petitions on which the election was held. Therefore, I would deny the General Counsel's Motion for Summary Judgment and, as requested by the Respondent Union, would dismiss the complaint in this proceeding on the grounds that a valid election has not been conducted within the meaning of Section 8(b)(7)(B) of the Act.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten to picket West Lawrence Care Center for a period of 1 year from this date, when an object of the threat is to force or require the Employer to recognize or bargain with us as the representative of its employees in the following bargaining unit:

All full-time and regular part-time nonprofessional employees and licensed practical nurses employed by West Lawrence Care Center, Inc., excluding all registered nurses, professional employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT threaten to picket West Lawrence Care Center for the above objects when, within the preceding 12 months, a valid election has been held that we did not win.

1115 NURSING HOME AND SERVICE EMPLOYEES UNION, HOTEL EMPLOYEES RESTAURANT EMPLOYEES, AFL-CIO